

**REMARKS**

The applicant respectfully requests reconsideration in view of the amendment and the following remarks.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al., US 5889116 (Suzuki) in view of Dudek et al., WO 01/88615 A1 (Dudek). The applicant respectfully traverses this rejection.

**Rejections under 35 U.S.C. 103(a)**

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Dudek. The Examiner asserts that Suzuki teaches a photopolymerizable relief-forming layer as defined in claim 1 comprising a styrene/butadiene block copolymer having a molecular weight  $M_w$  of from 80,000 to 250,000 g/mol and a styrene content of from 15 to 35% by weight, the proportion of butadiene present in 1,2-linked form being at least 15% by weight, and the amount of styrene/butadiene block copolymer is from 35 to 50% by weight and that of the plasticizer is from 25 to 50% by weight.

The Examiner noted that Suzuki does not disclose the process step of removal of the softened unpolymerized parts of the relief forming layer with formation of a printing relief or imagewise exposure on a digitally imageable layer through a mask (thermal development) (see page 3 of the office action).

According to Suzuki, the photosensitive rubber plate containing the composition is developed with a developing solution and then rinsed with water. See column 11, lines 17 to 31 of Suzuki. The developing solution is an aqueous 2% solution of coconut oil fatty acid diethanolamide. The aim of the Suzuki invention is to provide a photosensitive rubber plate

capable of being washed with water at a high rate at the step of development (see the Field of Invention at col. 1, lines 9-19). This was is achieved by using certain hydrophilic copolymers containing phosphorus - containing monoethylenically and diethylenically unsaturated monomers (see col. 2, lines 50-56).

There is no hint or suggestion in Suzuki that the photosensitive compositions can be used successfully with flexographic printing plates which are processed by the applicant's claimed thermal development.

Dudek is cited at page 1, line 32 of the applicant's specification. Dudek discloses a process for producing a flexographic printing plate, by which the photopolymerizable layer is imagewise exposed to actinic radiation through a mask, and the unpolymerized material is removed by thermal treatment from the element to form a relief surface (see page 11). Dudek does not disclose the photopolymerizable relief-forming layer of the present invention (comprising an elastomeric binder, ethylenically unsaturated monomers, plasticizer and photoinitiator). There is no hint or suggestion in Dudek that the photosensitive compositions of Suzuki, which are disclosed for a chemical development step using a washing solution can be successfully employed as photopolymerizable elastomeric layer in the Dudek process employing a thermal development step. Therefore, there was no motivation for the skilled in the art to modify the teaching of Dudek by using the photosensitive composition of Suzuki in order to arrive at the invention.

The Examiner argues at the bottom of page 3 to the top of page 4 of the Office Action,

Dudek et al. discloses the process step of removal of the unpolymerized parts of the photopolymerizable layer ... while in contact with an absorbent material. The removal process aids in providing internal strength and tear resistance to temperature up to, including and slightly beyond the melting temperature of the

uncured photopolymerizable material. Therefore, it would have been obvious to one of ordinary skilled in the art at the time of the invention to include the removal process step of Dudek et al. in the process of Suzuki et al. because Dudek et al. disclosed a removal process aids in providing internal strength and tear resistance to temperature up to, including and slightly beyond the melting temperature of the uncured photopolymerizable material”.

The applicant respectfully does not agree or understand the Examiner’s argument. The argument appears not to be based on sound scientific reasoning. In fact, Dudek states at page 16, lines 23 to 27,

preferred absorbent materials utilized to remove the uncured portions of the elastomeric layer from the cured portions of the layer are selected from absorbent materials which possess internal strength and tear resistance to temperatures up to, including and slightly beyond the melting temperature of the uncured photopolymerizable material.

This appears to be the portion of Dudek to which the Examiner is referring to. The paragraph is referring to the necessary properties of suitable absorbent materials which are used to remove the uncured portions in the thermal development step. The paragraph is not referring to the properties of the photopolymerizable elastomeric layer.

Dudek states at page 15, lines 6 to 15,

[t]he imagewise exposed photosensitive element is then ready for the next step of the present process which is thermally treating the exposed element to develop the relief image or pattern. Thermally treating the element includes heating the exposed photopolymerizable layer at a temperature sufficient to cause the unexposed (uncured) portions of the element to soften or melt or flow, and contacting the layer to an absorbent surface to absorb the melt or flow portions. The term “melt” is used to describe the behavior of the unirradiated portions of the photopolymerizable elastomeric layer subjected to an elevated temperature that softens and reduces the viscosity to permit absorption by the absorbent material.

The paragraph on page 16, lines 23 to 27, to which the Examiner is obviously referring, further only characterizes the desirable properties of this absorbent material.

A statement that modifications of the prior art to meet the claimed invention would have been “obvious to one of ordinary skill in the art at the time the invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See MPEP § 2143.01 IV. “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Furthermore, the Examiner cannot selectively pick and choose from the disclosed parameters without proper motivation as to a particular selection. The mere fact that a reference may be modified to reflect features of the claimed invention does not make the modification, and hence the claimed invention, obvious unless the prior art suggested the desirability of such modification. *In re Mills*, 916 F.2d 680, 682, 16 USPQ2d 1430 (Fed. Cir. 1990); *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1992). Thus, it is impermissible to simply engage in a hindsight reconstruction of the claimed invention where the reference itself provides no teaching as to why the applicant’s combination would have been obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). For the above reasons this rejection should be withdrawn.

In view of the above response, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 13838-00005-US from which the undersigned is authorized to draw.

Dated: September 8, 2009

Respectfully submitted,

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